

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY J. TAYLOR,
Petitioner,

No. C 10-03838 SBA (PR)

ORDER OF DISMISSAL

v.

VINCE CULLEN, Warden,
Respondent.

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis. In Petitioner's letter dated August 26, 2010 filed in his separate civil rights action, which is pending in this Court before the Honorable James Ware, he admits that he did not exhaust his state remedies before filing this petition. (Pet'r Letter dated Aug. 26, 2010 in Case No. 10-3217 JW (pr) at 1.)

Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-16 (1982). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A dismissal solely for failure to exhaust is not a bar to returning to federal court after exhausting available state remedies. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

Because Petitioner concedes that he has not exhausted all his state remedies, his federal petition is unexhausted and must be DISMISSED. This dismissal is without prejudice to Petitioner returning to state court to exhaust his state remedies and then filing a new federal habeas corpus petition. Should he do so, he is advised to file his new federal habeas corpus petition as soon as possible after his state court proceedings have concluded. The Court makes no ruling at this time on the issue of the timeliness of any future federal petition.

1 Leave to proceed in forma pauperis is GRANTED (docket nos. 2, 7). The Court has
2 rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case. The
3 Clerk of the Court shall terminate any pending motions and close the file.

4 IT IS SO ORDERED.

5 DATED: 9/23/10


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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6 GREGORY J. TAYLOR,
7 Plaintiff,

Case Number: CV10-03838 SBA

CERTIFICATE OF SERVICE

8 v.

9 VINCE CULLEN et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
Northern District of California.

13 That on September 23, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
in the Clerk's office.

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17 Gregory J. Taylor AB3828
18 California State Prison - San Quentin
San Quentin, CA 94974

19 Dated: September 23, 2010

20 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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